



STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following Agency of the State of Utah:

Dept. of Transportation	810	Proc./Region Three	referred to as STATE and the following:
Agency Name	Agency Code	Division	
CONTRACTOR	ESG Flagging Services		LEGAL STATUS OF CONTRACTOR
Name			Sole Proprietor
727 North 1550 East #100			Non-Profit Corporation
Address			<input checked="" type="checkbox"/> For-Profit Corporation
Orem	UT	84097	Partnership
City	State	Zip Code	Government Agency
Veronica Hazenbuller	(801)	223-7007	
Contact Person	Phone Number		
300177750	950005A	96459000000	
Federal ID#	Vendor Number	Commodity Code(s)	

2. CONTRACT TYPE AND PURPOSE:

This is a requirements contract to provide the State with flagging services. Services for Juab, Utah and Wasatch Countis @\$13.35/hr. Services for Duchesne County @\$13.60/hr. Services for Uintah and Daggett Counties @\$13.45/hr.

3. PROCUREMENT: This contract is entered into as a result of the Procurement process on bid RM4093,  
Requisition # 810 46000000174, FY 2005.
4. CONTRACT PERIOD: Effective date 07/09/04, Termination date 07/08/05, unless terminated early or extended in accordance with the terms of this contract. Renewal Options (if any) Three 1-year.
5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$999,999,999.99 for costs authorized by this contract
6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions.  
ATTACHMENT B: Scope of Work.  
ATTACHMENT C: Special Terms and Conditions.  
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:  
A. All other governmental laws, regulations or actions applicable to the goods and/or services authorized by this Contract.  
B. Utah State Procurement Code, Procurement Rules and Contractor's responses to Bid # RM4093 dated 06/29/04.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR  
SEE ATTACHED

Contractor's Signature  
CRAIG ALLRED

Contractor's Name  
PRESIDENT

Title

STATE OF UTAH

David K. Miles, Operations Engineer

Director, Division of Purchasing  
CONTRACT RECEIVED AND  
PROCESSED BY  
DIVISION OF FINANCE  
Director, Division of Finance

AUG 16 2004

AUG 17 2004

Debra Boulton	(801) 965-4070	(801) 965-4073	dboulton@utah.gov
Agency Contact Person	Phone Number	Fax Number	Email Address

ENT'D FEB 25 2005  
JUL 13 2005

059042

## MAIL TO:

## Invitation to Bid

Solicitation Number: RM4093

STATE OF UTAH  
DIVISION OF PURCHASING  
3150 STATE OFFICE BUILDING, CAPITOL HILL  
P.O. BOX 141061  
SALT LAKE CITY, UTAH 84114-1061  
TELEPHONE (801) 538-3026  
<http://purchasing.utah.gov>



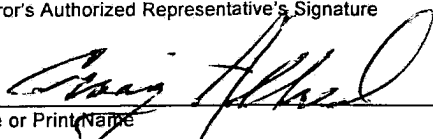
Due Date: 06/29/04 at 2:00 P.M.

Date Sent: June 10, 2004

Goods and services to be

TO PROVIDE THE UTAH DEPARTMENT OF TRANSPORTATION WITH FLAGGING SERVICES

Please complete

Company Name <b>ESG Flagging Services</b>		Federal Tax Identification Number <b>30-0177750</b>	
Ordering Address <b>727 N 1550 E, SUITE 100</b>	City <b>Orem</b>	State <b>UT</b>	Zip Code <b>84097</b>
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person <b>Veronica Hazembuller</b>		
Telephone Number (include area code) <b>(801) 223-7007</b>	Fax Number (include area code) <b>(801) 223-9001</b>		
Company's Internet Web Address <b>www.esghr.com</b>	Email Address <b>veronica@esghr.com</b>		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If no, enter where produced, etc. _____</p>			
Offeror's Authorized Representative's Signature 		Date <b>6/24/04</b>	
Type or Print Name <b>Craig Allred</b>		Position or Title <b>President</b>	

## ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.
7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.
9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.
11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.
12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.
14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply

to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

## **FLAGGING SERVICES UDOT REGION THREE**

### **PART 1 RELATED SECTIONS**

- A. UDOT Standard Drawings – Traffic Control Series
- B. UDOT Standard Specifications, Section 02891: Traffic Signs
- C. MUTCD Sign G20-4

### **PART 2 PRODUCTS**

#### **2.1 FLAGGER EQUIPMENT AND CLOTHING**

- A. Comply with the Department's "Flagger Training Handbook"
- B. Comply with Standard Drawings TC Series
- C. Clothing
  - 1. Flagger vest and hard hat: orange, red-orange or fluorescent version of these colors:
    - a. Safety vests with a minimum of 775 square inches of background material. Night work requires a minimum of 201 square inches of reflective material (100.5 square inches on the front and 100.5 square inches in the back). Reflective material shall be white and/or strong yellow-green.
    - b. Hard hat with 10 square inches of white or strong yellow=green reflective tape placed around the base of the hard hat and visible to traffic from all directions.

#### **2.2 FLAGGING**

- A. Flaggers must have a current flagging certificate and must present proof of certification upon request by the Department.
  - 1. Acceptable certifications
    - a. UDOT Contractor Certification (Utah Valley State College)
    - b. American Traffic Safety Services Association (ATSSA)

#### **2.3 GENERAL**

- A. Flagging by the hour

## **PART 3 GENERAL SCOPE OF WORK**

### **1.1 SECTION INCLUDES**

- A. The intent of this contract is to provide flagging services for the Department's Maintenance crews while they perform their maintenance tasks. The flagger shall be under the supervision of the maintenance crew supervisor.
- B. The quantity of flagging required is on an as needed basis and, therefore not accurately definable. The quantity shown is for estimating purposes only to establish a unit price. Because of unknown conditions, the daily hours may vary. No additional compensation shall be allowed for days with short hours. Payment will be based on the actual hours used.
- C. Flaggers shall furnish appropriate clothing, hardhat and a fluorescent orange safety vest. Flaggers shall also furnish appropriate "stop" and "slow" signs.
- D. Flaggers shall furnish appropriate ticket books, where flaggers and station supervisor will sign off each night on hours worked. Station supervisor shall receive a copy of the ticket documenting each day's operation and hours worked.
- E. Flaggers shall be certified and shall report to the designated location properly dressed and have the proper equipment as specified in Section 2.1
- F. Flagging shall be performed as per the Department's "Instruction to Flaggers Handbook" and the "Safety Orders of the Industrial Commission of Utah"
- G. This contract shall be for one year with (3) one year renewal options
- H. Non-performance of any part of the contract shall be immediate reason for termination of this contract
- I. The Utah Department of Transportation reserves the right to cancel all or part of this contract based on budgetary conditions and available funds.
- J. The Contractor shall have a minimum of 24 hours notice as to the location where flagging service shall be required.
- K. Flaggers shall be required within the areas of responsibility shown on the attached maps.
- L. Time begins at the hour designated by the Station Supervisor for flagging to start. A minimum of 2 hours shall be paid. Hours worked by individuals flagging for Region Three, in excess of 40 hours per week, will be paid to the contractor at 1 ½ times the hourly rate.

## **ATTACHMENT C: SPECIAL TERMS AND CONDITIONS**

1. **CONTRACT PURCHASE:** This is a requirements contract to provide the State with pilot car and flagging services for a period of one year with (3) one year renewal options.
2. **CONTRACT ACCEPTANCE:** At the time the bid is signed by the Offeror, the signature of that Offeror will be used as a legally binding signature if awarded this contract. When signed by the Division of Purchasing and a Utah Department of Transportation representative and assigned a contract number, this document will become a legally binding contract with the Offeror for the contract period specified.
3. **QUANTITY OR AMOUNT ESTIMATES:** Quantities have been estimated for bidding purposes and are not to be construed as a guarantee to purchase any service or specific amount.
4. **PRICING:** The Contractor agrees that the prices bid on materials/services in this contract shall be guaranteed for a period of one (1) year.

**ANY CHANGE REQUEST ON PRICES MUST GUARANTEE THE PRICE FOR THE SAME LENGTH OF TIME AS INDICATED ABOVE AND MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY REQUEST FOR CHANGE ON PRICES OR SPECIFICATIONS MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE ON PRICES OR SPECIFICATIONS SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF THE UTAH DEPARTMENT OF TRANSPORTATION.**

5. **WAGES:** The Contractor shall be responsible for all applicable company wages in accordance with the Federal, State and local laws and ordinances.
6. **INVOICING: THE CONTRACT NUMBER AND ORDER NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES AND ALL CORRESPONDENCE RELATING TO EACH ORDER AND DELIVERY.**

In the event the State is entitled to a cash discount, the period of computation shall commence on the delivery date or the date of a correct invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date final approval is authorized. The State reserves the right to adjust incorrect invoice.

The Contractor shall submit invoices to the Utah Department of Transportation, Region Three, 658 North 1500 West, Orem, Utah 84057.

## ATTACHMENT C: SPECIAL TERMS AND CONDITIONS

7. **NON-ASSIGNMENT:** The Contractor shall not sublet, assign or transfer any part of this contract without prior written approval from the Procurement Supervisor or the Procurement Manager of Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.
8. **NON-COMPETE CLAUSE:** The Contractor represents its officers and employees are free to contract with the State and are not subject to restrictions by the terms of their present or past employment including, but not limited to an agreement not to compete for as a period of time unless disclosure has been made. Contractor must disclose to the State any possible conflicts, in writing, before the contract is signed and the State will evaluate whether to continue with contract execution. The State may elect to terminate a contract immediately with a Contractor who is subsequently determined to be subject to such restrictions without liability to the State. If the State elects to terminate as a contract for this reason, the State will supersede paragraph #12 in Attachment A - Standard Terms and Conditions and will not provide 90 day prior notice to the Contractor.
9. **CERTIFICATE OF INSURANCE:** The Contractor agrees to provide the Utah Department of Transportation, Procurement Section with evidence of Workman's Compensation sufficient to cover all of the Contractor's employees in accordance with the Utah State Statues. The Contractor shall provide a Certificate of Insurance agreeing to provide and maintain a policy of insurance in which the Utah Department of Transportation shall be specifically named as an additional insured. The insurance coverage shall be in the following minimum amounts.
  1. \$250,000 for each bodily injury.
  2. \$500,000 for each accident or occurrence.
  3. \$100,000 for property damage.

In the event the Contractor cannot obtain the foregoing coverage, the Contractor shall provide a policy with a minimum coverage of \$100,000.00 in aggregate. The certification must also state that cancellation or decrease in coverage shall not be made, without giving the State at least 30 days prior written notice.

In the event that governmental immunity limits are subsequently altered, the Contractor shall be required to provide a new certificate of insurance.



**ATTACHMENT D: STATION AND SUPERVISOR LISTING**

<u>STA.</u>	<u>STA. SUPERVISOR</u>	<u>PHONE #</u>
321	Glen Wahlberg	435-433-6911
322	Travis Garrett	435-623-1717
323	Stuart Hoff	801-768-9851
324	Alan Childs	801-754-3951
325	Neil Lundell	801-434-7470
326	Morgan Andrews	801-798-6166
327	Paul Spadafora	801-426-4755
331	Val Davis	435-654-0191
345	Stacy Davis	435-548-2625
333	Paul Baum	435-848-5665
334	George (Tyke) Kargis	435-738-5731
335	Fred Priebe	435-722-2942
336	Jim Archibald	435-784-3534
337	Rod Thurgood	435-789-2333